



BOARD OF ADJUSTMENT

APPROVED MINUTES

April 24, 2018, 8:30 a.m.
Committee Room, 2nd Floor, City Hall
101 City Hall Plaza, Durham, NC

I. Call to Order

Chair deLacy called the meeting to order at 8:35 a.m.

II. Roll Call

Members Present:

Regina deLacy, Chair
Phillip Harris, Jr.
Randal Rogers
Alisa Thomas
Fredrick Davis
Michael Schietzelt, Alternate

Members Absent:

Michael Kriston
Najuma Thorpe
Jacob Rogers, Designated Alternate

Staff Present:

Bo Dobrzanski, Planning Supervisor
Emily Struthers, Planner
Don O'Toole, City Attorney's Office
Bryan Wardell, County Attorney's Office
Joanne Gordon, Clerk

III. Adjustments to the Agenda – Case B1700052 was moved last place under “Hearing and Determination of Cases” on the agenda.

IV. Swearing-In of Witnesses

Chair deLacy asked: Are there any Board members that would have any conflicts of interests with regard to the cases before us today? Chair deLacy then asked if there were any early dismissals. No conflicts of interest were noted.

Chair deLacy read the following statement:

This Board is a quasi-judicial Board of record and, as such, all testimony will be recorded. The proceedings of this Board will be governed by the Unified Development Ordinance, as recorded.

As Chair of the Durham Board of Adjustment, I would like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First, a staff member of the City-County Planning Department will present an overview of the case. Then the applicant presents its evidence. The opponents, if there are any, will present their evidence. The applicant may then present its rebuttal. Board members are asked to refrain from questions until each speaker has completed his or her presentation. All testimony is given under oath. In a few moments, I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

Testimony should consist of facts each witness knows, not hearsay. All witnesses should come forward to the podium, and identify themselves each time they approach the podium. Speak directly into the microphone so their testimony can be recorded on tape. Before each application, I will read the findings that must be made to approve an application, and any testimony should be relevant to the criteria that the Board uses to determine whether to approve an application.

Any written evidence or exhibits must be presented to the Chair (Vice Chair) and a determination will be made whether it should be accepted. Written evidence or exhibits can be inspected by the opposing party. All evidence, written or oral, or exhibits can be objected to.

Witnesses are subject to cross-examination. Opposing representatives will have an opportunity to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine, you may raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would also like to remind everyone in attendance to be courteous and ask questions respectfully. If there are numerous people who will be providing the same or similar testimony either for or against an application, in the interest of time, I would request that you please select a representative to present that testimony.

I would like to note that Board members may have visited each site under consideration as part of their preparation for this meeting.

The Board will vote on each case after the presentation of all the evidence, for and against an application, and discussion among themselves concerning the case. North Carolina law requires that in order for an applicant's request to be granted for a City application before the Board, five (5) of the seven (7) voting Board members must approve the request. For a County variance request, North Carolina law requires that in order for an applicant's request to be granted, six (6) of the seven (7) voting Board members must approve the request. For other County requests, including applications for a minor special use permit, four (4) of the seven Board members, or a simple majority, must approve the request.

All decisions of this Board are subject to appeal to the Durham Superior Court. Anyone in the audience, other than the applicant, who wishes to receive a copy of the formal order issued by this Board on a particular case, must submit a written request for a copy of the order at this hearing. Forms for this purpose are available from the City-County Planning Staff.

V. Hearing and Determination of Cases

a. Case B1800005 City: A variance from the location requirements for an accessory structure. The subject site is located at 109 Blackford Court, is zoned Residential Suburban – 20 (RS-20) and in the Suburban Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt

Staff Report: Ms. Struthers presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary.

Speakers: Mr. William Mathews spoke in support. No one spoke in opposition.

MOTION: Mr. Harris made a motion that case B1800005, an application for a variance on property located at 109 Blackford Court has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.

(Harris, R. Rogers 2nd)

ACTION: Approved, 6-0

b. Case B1800006 City: A variance from a required street yard setback. The subject site is located at 1321 and 1325 Vickers Avenue, is zoned Residential Suburban – 8 (RS-8) and in the Urban Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt

Staff Report: Ms. Struthers presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary.

Speakers: Mr. Cliff Credle, Ms. Lydia Newman, Mr. Ty Newman spoke in support. No one spoke in opposition.

MOTION: Mr. Davis made a motion that case B1800006, an application for a variance on property located at 1321 and 1325 Vickers Avenue has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.

(Davis, Harris 2nd)

ACTION: Approved, 6-0

c. Case B1700052 – County: A minor special use permit for an educational facility (middle school) in a residential district. The subject site is located at 501, 505, and 717 Orange Factory Road, is zoned Residential Rural (RR) and in the Rural Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt

Speakers: Patrick Byker, Dan Jewell, Donald Sever, Lyle Overcash, Kevin Davidson, Aric V. Geda, Richard Kirkland, Jim Murphy, and Jeffrey Roether spoke in support.

Leann Brown, Doug Winter, Brian Sarvis, Dorothy Sarvis, James Wolak, Tim Ellis, Jim Vintrella, Marina Mahoney, Patrick Mahoney, Kathy Chambers, Chelsea Clifford spoke in opposition.

Staff Report Mr. Dobrzanski presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary

Staff Recommendation: Staff recommends denial

MOTION: Ms. Thomas made a motion that case B1700052, An application for a minor special use permit on property located at 501, 505 and 717 Orange Factory Road has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.

- Education facility shall serve at middle school level.
- All undisturbed areas south of the soccer field shown on the plan shall remain undisturbed in perpetuity.
- There shall be no permanent rip rap.
- Designated on the site plan there should be a 30 ft., 60.6 opacity buffer as identified in the staff report.

(Thomas, R. Rogers 2nd)

ACTION: Approved, 5-0 (Davis not present)

VI. Approval of Summary Minutes from March 27, 2018

Motion: Approve the Minutes from March 27, 2018 (Harris, R. Rogers 2nd)

Action: Motion carried, 5-0 (Davis not present)

VII. Approval of Orders

Case B1800005

Motion: Approve the order for case B1800005 (deLacy, Harris 2nd)

Action: Motion carried, 5-0 (Davis not present)

Case B1800006

Motion: Approve the order for case B1800005 (deLacy, Harris 2nd)

Action: Motion carried, 5-0 (Davis not present)

VIII. Old Business – None

IX. New Business – None

X. Adjournment

The meeting adjourned at 1:49 p.m.

Respectfully Submitted,
Joanne Gordon, Clerk to the Board